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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

KELVIN D. DANIEL, et al

Plaintiffs,

vs.

SWIFT TRANSPORTATION  
CORPORATION,

Defendant

Case No.: 2:11-CV-01548-ROS

FIRST AMENDED CLASS ACTION  
COMPLAINT FOR JURY

**EXHIBIT**

tabbies

C

1 Now come the Plaintiffs, Kelvin D. Daniel, Tanna  
2 Hodges and Robert R. Bell, Jr. on behalf of themselves  
3 and all other similarly situated individuals and allege  
4 the following claims:  
5

6 **PRELIMINARY STATEMENT**

7 1. This is a class action on behalf of consumers  
8 who were the subject of criminal background reports  
9 obtained by Swift Transportation Corporation ("Swift")  
10 as a precondition of employment with Swift during the  
11 five-year period preceding the filing of this action  
12 (the "Class Period") seeking remedies under the Fair  
13 Credit Reporting Act ("FCRA"), 15 U.S.C. §1681, et seq.  
14  
15

16 **JURISDICTION AND VENUE**

17 2. The Court has subject matter jurisdiction  
18 pursuant to 28 U.S.C. §1331 and 15 U.S.C. §1681p.  
19

20 3. Venue is proper in the District of Arizona  
21 because a substantial part of the events or omissions  
22 giving rise to the allegations contained herein  
23 occurred in the District of Arizona. 28 U.S.C. §  
24 1391(b). Further, Swift maintains a principal place of  
25 business in this judicial district.  
26  
27  
28

**PARTIES**

1  
2 4. Kelvin Daniel is a citizen of the State of  
3 Georgia, a Gulf War veteran and a "consumer" within the  
4 meaning of 15 U.S.C. § 1681a.  
5

6 5. Tanna Hodges is a citizen of the State of  
7 Texas and a "consumer" within the meaning of 15 U.S.C.  
8 § 1681a.  
9

10 6. Robert R. Bell, Jr. is a citizen of the State  
11 of Pennsylvania and a "consumer" within the meaning of  
12 15 U.S.C. § 1681a.  
13

14 7. Swift is a for-profit corporation with a  
15 principal place of business in Maricopa County, State  
16 of Arizona.  
17

18 8. Further, Swift is a "person" using "consumer  
19 reports" to make "employment decisions" and take  
20 "adverse action" against "consumers", as those terms  
21 are defined by 15 U.S.C. § 1681a.  
22

**ALLEGATIONS AS TO DANIEL**

23  
24 9. On or about December 27, 2010, Daniel applied  
25 for a commercial truck driver position with Swift  
26 online.  
27

28 10. Following a successful application process,

1 Daniel was hired and scheduled to attend Swift's  
2 orientation program.

3 11. On or about January 24, 2011, the first day of  
4 in-person orientation, Swift ordered a criminal  
5 background report regarding Daniel from HireRight  
6 Solutions, Inc. ("HireRight") a consumer reporting  
7 agency as defined by 15 U.S.C. § 1681a, without proper  
8 authorization from Daniel.  
9

10 12. At no time following Daniel's in-person  
11 interaction with Swift, did he receive a clear,  
12 conspicuous and stand-alone disclosure that a criminal  
13 background report would be obtained for employment  
14 purposes.  
15

16 13. Immediately after receiving the subject  
17 criminal background report, Swift took adverse action  
18 against Daniel, dismissing him from orientation based  
19 upon the information in the retrieved criminal  
20 background report.  
21

22 14. At no time did Swift provide Daniel with any  
23 verbal or written notice that it intended to take  
24 adverse action by declining employment based upon the  
25 results of the report.  
26  
27  
28

1       15. Daniel was not provided a copy of the report  
2 or a summary of his rights as required by 15 U.S.C. §  
3 1681b(b)(3).  
4

5                   **ALLEGATIONS AS TO HODGES**

6       16. On or about September 25, 2009, Hodges applied  
7 in-person for a commercial truck driver position with  
8 Swift. A copy of Hodges's application is attached as  
9 Exhibit A.  
10

11       17. At no time did Hodges receive a clear,  
12 conspicuous and stand alone disclosure that a criminal  
13 background report would be obtained for employment  
14 purposes.  
15

16       18. Without proper authorization from Hodges,  
17 Swift ordered a criminal background report regarding  
18 Hodges from HireRight.  
19

20       19. Immediately after receiving the subject  
21 criminal background report, Swift took adverse action  
22 against Hodges by determining to disqualify her from  
23 further consideration for employment based upon the  
24 information in the retrieved criminal background  
25 report.  
26  
27

28       20. At no time did Swift provide Hodges with any

1 verbal or written notice that it intended to take  
2 adverse action by declining employment based upon the  
3 results of the report.  
4

5 21. Hodges was not provided a copy of the report  
6 or a summary of her rights as required by 15 U.S.C. §  
7 1681b(b)(3).  
8

9 **ALLEGATIONS AS TO BELL**

10 22. On or about October 2, 2009, Bell applied via  
11 facsimile for a commercial truck driver position with  
12 Swift. A copy of Bell's application is attached as  
13 Exhibit B. Swift's application provides no indication  
14 that a consumer report may be obtained for employment  
15 purposes.  
16

17 23. Bell did not authorize, nor was he requested  
18 by Swift verbally, electronically or in writing, to  
19 authorize the procurement of a criminal background  
20 report to be provided HireRight.  
21

22 24. Further, prior to obtaining Bell's criminal  
23 background report, Swift did not provide Bell with  
24 verbal, electronic or written notice of his rights to:  
25 1) obtain a free copy of a criminal background report  
26 from the consumer reporting agency within 60 days; and  
27  
28

1 2) to dispute the accuracy or completeness of any  
2 information in the consumer report directly with the  
3 consumer reporting agency.  
4

5 25. After receiving Bell's application, Swift -  
6 without any authorization from Bell - ordered a  
7 criminal background report regarding Bell from  
8 HireRight that grossly misidentified Bell as having  
9 been convicted of felony burglary, felony robbery,  
10 grand larceny and several parole violations, all  
11 leading to a ten-year prison sentence. None of these  
12 crimes were committed by Bell.  
13  
14

15 26. On October 2, 2009, immediately after  
16 receiving the subject criminal background report, Swift  
17 took adverse action against Bell by determining not to  
18 hire him based upon the results of the report.  
19

20 27. At no time did Swift provide Bell with any  
21 verbal, written or electronic notice that it intended  
22 to take adverse action by declining employment based  
23 upon the results of the report.  
24

25 28. Bell was never advised by Swift of the reason  
26 for the adverse action, nor did he learn of the  
27 inaccurate report until receiving a copy via U.S. Mail  
28

1 from HireRight on or about October 7, 2009, when he  
2 received a derogatory letter and a copy of the report  
3 from HireRight.  
4

5 **ALLEGATIONS AS TO THE COMMON QUESTIONS**

6 29. For many years, Swift has purchased criminal  
7 background reports from consumer reporting agencies  
8 trafficking in the reputations of America's workforce,  
9 which are used as a basis for taking adverse action  
10 against job applicants.  
11

12 30. Swift does not provide or obtain an  
13 appropriate disclosure and authorization from job  
14 applicants as required by 15 U.S.C. § 1681b(b)(2) prior  
15 to acquiring these criminal background reports.  
16

17 31. Further, Swift does not provide pre-adverse  
18 action notice to job applicants, including a copy of  
19 the applicants' criminal background report and a  
20 statement of the applicants' rights as required by 15  
21 U.S.C. §§ 1681b(b)(3) and 1681m(a).  
22

23 32. Swift's violations of the FCRA have been  
24 willful, wanton and reckless in that Swift knew, or  
25 reasonably should have known, that it was failing to  
26 comply with the requirements of the FCRA.  
27  
28



1        33. 15 U.S.C. §1681n(a) permits a consumer to  
2 recover statutory and punitive damages, along with  
3 attorneys' fees and costs for willful violations of the  
4 FCRA.  
5

6                                    **CLASS ACTION ALLEGATIONS**

7        34. Pursuant to F. R. Civ. P. 23, Daniel, Hodges  
8 and Bell bring this action on behalf of the Class  
9 initially defined below:  
10

11                    Consumers residing in the United  
12 States who applied for employment  
13 with Swift, and about whom Swift  
14 procured a criminal background  
15 report for employment purposes  
during the application process.

16        35. Hodges and Daniel also allege the following  
17 sub-classes, of which they are a member:  
18

19                    **Inadequate Disclosure and Authorization**  
20                    **In-Person Contact**

21        a. Consumers residing in the United  
22 States who applied for  
23 employment with Swift, and  
24 during the application process,  
25 about whom Swift procured a  
26 criminal background report or  
27 other consumer report without  
28 first in a document that  
consisted solely of the  
disclosure, (i) providing the  
consumer with a disclosure in  
writing in a document that  
consisted solely of the  
disclosure that a consumer

1 report would be obtained for  
2 employment purposes, and (ii)  
3 obtaining the consumer's express  
4 written authorization to procure  
5 such consumer report.

6  
7 **Pre-Adverse Action Notice**  
8 **In-Person Applicants**

9 b. All natural persons  
10 residing in the United States  
11 (a.) who applied for an  
12 employment position with  
13 Defendant or any of its  
14 subsidiaries, (b.) as part of  
15 this application process, were  
16 the subject of a consumer report  
17 obtained by Defendant during the  
18 applicable limitations period as  
19 established by 15 U.S.C. 1681p,  
20 preceding the filing of this  
21 action and during its pendency,  
22 (c.) whose report was obtained  
23 by Swift at the same time or  
24 after there had been at least  
25 one in-person interaction with  
26 the consumer, (d.) where that  
27 consumer report contained at  
28 least one derogatory item that  
would disqualify the person from  
such position under Defendant's  
hiring policies, (e.) which  
consumer was not then approved  
or hired for the position, (f.)  
and to whom Defendant did not  
provide a copy of the consumer  
report and other disclosures  
stated at 15 U.S.C. §  
1681b(b)(3)(A)(ii) at least five  
business days before the date  
the employment decision is first  
noted in Defendant's records.

1       36. Bell also alleges the following sub-classes,  
2 of which he is a member:

3                   **Inadequate Disclosure and Authorization**  
4       **Contact by Facsimile, Telephone, Mail, Computer and**  
5                   **Similar Means**

6           a. Consumers residing in the United  
7           States who applied for  
8           employment with Swift via  
9           facsimile, an internet website,  
10          electronic mail, regular mail,  
11          or through a third party and  
12          during the application process,  
13          Swift procured a criminal  
14          background report or other  
15          consumer report, which report  
16          was obtained by Swift before  
17          there had been at least one  
18          direct telephone or in-person  
19          interaction with the consumer,  
20          without (a.) first obtaining  
21          direct electronic or written  
22          authorization to procure a  
23          consumer report, and/or (b.)  
24          directly providing the consumer  
25          with notice of their right to  
26          obtain a free copy of a consumer  
27          background report from the  
28          consumer reporting agency within  
29          60 days, and to dispute the  
30          accuracy or completeness of any  
31          information in the consumer  
32          report directly with the  
33          consumer reporting agency.

34                   **Adverse Action**  
35       **Contact by Facsimile, Telephone, Mail, Computer and**  
36                   **Similar Means**

37           b. All natural persons residing in  
38           the United States (a.) who  
39           applied for an employment

1 position with Defendant or any  
2 of its subsidiaries, (b.) as  
3 part of this application process  
4 were the subject of a consumer  
5 report obtained by Defendant  
6 during the applicable  
7 limitations period as  
8 established by 15 U.S.C. 1681p,  
9 preceding the filing of this  
10 action and during its pendency,  
11 (c.) where that consumer report  
12 contained at least one  
13 derogatory item that would  
14 disqualify the person from such  
15 position under Defendant's  
16 hiring policies, (d.) which  
17 consumer was not then approved  
18 or hired for the position, (e.)  
19 who did not have either direct  
20 telephone or direct in-person  
21 contact with Swift and (f.) to  
22 whom Defendant did not provide  
23 direct electronic or written  
24 notice that: the adverse action  
25 was taken based in whole or in  
26 part on the consumer report, the  
name, address, and telephone  
number of the consumer reporting  
agency, that the consumer  
reporting agency did not make  
the decision to take adverse  
action and would be unable to  
provide the consumer with  
specific reasons why the adverse  
action was taken, and that the  
consumer could request a free  
copy of the report and dispute  
the accuracy or completeness of  
the report, as required by  
1681b(b)(3)(B).

27 37. Upon information and belief, the putative  
28 Class exceeds 5,000 members. Information concerning

1 the exact size of the putative class is within the  
2 exclusive possession of Swift.

3 38. The Class members are so numerous that joinder  
4 of all members is impracticable.

5 39. Hodges', Daniel's and Bell's claims are  
6 typical of the claims of the other Class members as all  
7 Class members were similarly affected by Swift's  
8 unlawful conduct in violation of the FCRA.

9 40. Hodges, Daniel and Bell will fairly and  
10 adequately protect the interest of the Class members  
11 and has retained counsel competent and experienced in  
12 complex class-action litigation. Hodges, Daniel, and  
13 Bell are members of the Class and do not have any  
14 interests antagonistic to or in conflict with the  
15 members of the Class. Further, Hodges's, Daniel's and  
16 Bell's claims are the same as those of the Class, which  
17 all arise from the same operative facts and are based  
18 upon the same legal theories.

19 41. Common questions of law and fact exist as to  
20 all Class members and predominate over any questions  
21 solely affecting individual Class members, including:  
22  
23  
24  
25  
26  
27  
28

**In-Person Contact**

- a. Whether Swift's standard procedure violated 15 U.S.C. §1681b(b)(2)(A)(i) by failing to make a "clear and conspicuous" disclosure in a document that consists solely of the disclosure;
- b. Whether it is Swift's standard procedure to obtain a written authorization to procure or cause to be procured consumer reports for employment purposes required by §1681b(b)(2)(A)(ii);
- c. Whether it is Swift's standard procedure to provide a copy of the consumer report to the applicant or employee before declining to hire or discharging the applicant or employee based on the results thereof as required by 15 U.S.C. §1681b(b)(3)(A)(i);
- d. Whether Swift provided a copy of a summary of the applicant or employee's rights under the FCRA before declining to hire or discharging the applicant or employee as required by 15 U.S.C. §1681b(b)(3)(A)(ii);
- e. Whether Swift provided oral, written or electronic notice of the adverse action to the consumer that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer with the specific reasons why the adverse action

1 was taken as required by 15  
2 U.S.C. §1681m(a)(2)(B);

3 f. Whether Swift provided oral,  
4 written or electronic notice of  
5 the consumer's right to obtain a  
6 free copy of the consumer report  
7 on the consumer from the  
8 consumer reporting agency that  
9 prepared the report as required  
10 by 15 U.S.C. § 1681m(a)(3)(A));

11 **Contact by Facsimile, Telephone, Mail, Computer and**  
12 **Similar Means**

13 g. Whether Swift's standard  
14 procedure violated 15 U.S.C. §  
15 1681b(b)(2)(B)(i) by failing to  
16 provide the consumer with  
17 verbal, electronic, or written  
18 notice of a right to obtain a  
19 free copy of a consumer  
20 background report from the  
21 consumer reporting agency within  
22 60 days, and to dispute the  
23 accuracy or completeness of any  
24 information in the consumer  
25 report directly with the  
26 consumer reporting agency.

27 h. Whether Swift's standard  
28 procedure violated 15 U.S.C.  
§1681b(b)(2)(B)(ii) by failing  
to obtain verbal, electronic or  
written consent to procure a  
consumer report;

i. Whether Swift, within 3 business  
days of taking adverse action,  
provided oral, written or  
electronic notification to  
consumer that adverse action has  
been taken based in whole or in  
part on a consumer report  
received from a consumer

1 reporting agency as required by  
2 §1681b(b) (3) (B) (i) (I);

3 j. Whether Swift, within 3 business  
4 days of taking adverse action,  
5 provided oral, written or  
6 electronic notification to  
7 consumer that of the name,  
8 address and telephone number of  
9 the consumer reporting agency  
10 that furnished the consumer  
11 report (including a toll-free  
12 telephone number established by  
the agency if the agency  
compiles and maintains files on  
consumers on a nationwide basis)  
as required by  
§1681b(b) (3) (B) (i) (II);

13 k. Whether Swift, within 3 business  
14 days of taking adverse action,  
15 provided oral, written or  
16 electronic notification to  
17 consumer that the consumer  
18 reporting agency did not make  
19 the decision to take the adverse  
20 action and is unable to provide  
21 to the consumer the specific  
reasons why the adverse action  
was taken; as required by  
§1681b(b) (3) (B) (i) (III);

22 l. Whether Swift, within 3 business  
23 days of taking adverse action,  
24 provided oral, written or  
25 electronic notification to  
26 consumer that the consumer may,  
27 upon providing proper  
28 identification, request a free  
copy of a report and may dispute  
with the consumer reporting  
agency the accuracy or  
completeness of any information



1 in a report as required by  
2 §1681b(b) (3) (B) (i) (IV);

3 m. Whether Swift, within 3 business  
4 days of receiving a consumer's  
5 request for a copy of a consumer  
6 report from the person who  
7 procured the report, together  
8 with proper identification,  
9 provides the consumer a copy of  
10 a report and a copy of the  
11 consumer's rights as prescribed  
12 by the Federal Trade Commission  
13 under section 1681g (c) (3) of  
14 this Fair Credit Reporting Act  
15 as required by  
16 §1681b(b) (3) (B) (ii); and

17 n. Whether Swift's failures to  
18 comply with the FCRA were  
19 willful.

20 42. A class action is superior to other available  
21 methods for the fair and efficient adjudication of this  
22 controversy because the membership of the Class is so  
23 numerous and involves claims that, taken individually,  
24 may not justify the costs and effort of bringing suit.

25 43. Further, the prosecution of several actions by  
26 individual members of the Class would create a risk of  
27 varying adjudications with respect to members of the  
28 Class, as well as create inconsistent standards of  
conduct for those opposing the Class. Additionally,  
individual actions by members of the Class may be

1 dispositive of the interests of other members not  
2 parties to the adjudication of the claim, which would  
3 impair or impede the ability of those individuals to  
4 protect their interests.  
5

6 **COUNT ONE - CLASS CLAIM BY DANIEL AND HODGES**  
7 **DISCLOSURE AND AUTHORIZATION - IN-PERSON CONTACT**

8 44. Daniel and Hodges reallege and incorporate by  
9 reference all preceding allegations of law and fact.

10 45. Swift willfully violated 15 U.S.C. §  
11 1681b(b)(2)(A)(i) by failing to provide applicants and  
12 employees with a clear and conspicuous written  
13 disclosure in a document consisting solely of the  
14 disclosure that a consumer report may be obtained for  
15 employment purposes.  
16

17 46. Swift willfully violated 15 U.S.C. §  
18 1681b(b)(2)(A)(ii) by failing to obtain a valid  
19 authorization in writing from Daniel, Hodges and the  
20 Class members to procure a consumer report for  
21 employment purposes.  
22

23 47. Daniel, Hodges and the Class members seek  
24 statutory damages for these violations pursuant to 15  
25 U.S.C. § 1681n(a)(1)(A).  
26

27 48. Daniel, Hodges and the Class members also seek  
28

1 punitive damages for these violations pursuant to 15  
2 U.S.C. § 1681n(a)(2).

3 49. In the alternative to the allegations that  
4 these violations were willful, Daniel, Hodges and the  
5 Class members allege that the violations were negligent  
6 and seek issue certification of that issue and an  
7 appropriate remedy, if any, pursuant to 15 U.S.C. §  
8 1681o.  
9 10

11 **COUNT TWO - CLASS CLAIM BY DANIEL AND HODGES**  
12 **PRE-ADVERSE ACTION - IN-PERSON CONTACT**

13 50. Daniel and Hodges reallege and incorporate by  
14 reference all preceding allegations of law and fact.  
15

16 51. Swift willfully violated 15 U.S.C. §  
17 1681b(b)(3)(A)(i) by failing to provide a copy of the  
18 consumer report used to make an employment decision to  
19 Daniel, Hodges and the Class Members before taking  
20 adverse action that was based in whole or in part on  
21 that report.  
22

23 52. Swift willfully violated 15 U.S.C. §  
24 1681b(b)(3)(A)(ii) by failing to provide a copy of the  
25 summary of rights required by this section to Daniel,  
26 Hodges and the Class Members before taking adverse  
27 action that was based in whole or in part on a consumer  
28

1 report.

2 53. Daniel, Hodges and the Class members seek  
3 statutory damages for these violations pursuant to 15  
4 U.S.C. § 1681n(a)(1)(A).

6 54. Daniel, Hodges and the Class members also seek  
7 punitive damages for these violations pursuant to 15  
8 U.S.C. § 1681n(a)(2).

10 55. In the alternative to the allegations that  
11 these violations were willful, Daniel, Hodges and the  
12 Class members allege that the violations were negligent  
13 and seek issue certification of that issue and an  
14 appropriate remedy, if any, pursuant to 15 U.S.C. §  
15 1681o.

17  
18 **COUNT THREE - CLASS CLAIM BY BELL**  
19 **AUTHORIZATION - CONTACT BY FACSIMILE, MAIL, COMPUTER**  
20 **AND SIMILAR MEANS**

21 56. Bell realleges and incorporates by reference  
22 all preceding allegations of law and fact.

23 57. Swift willfully violated 15 U.S.C.  
24 §1681b(b)(2)(B)(ii) by failing to obtain the  
25 applicants' oral, written or electronic consent prior  
26 to procuring a consumer report for employment purposes.

28 58. Bell and the Class members seek statutory

1 damages for these violations pursuant to 15 U.S.C.  
2 §1681n(a)(1)(A).

3 59. Bell and the Class members also seek punitive  
4 damages for these violations pursuant to 15 U.S.C.  
5 §1681n(a)(2).

6 60. In the alternative to the allegations that  
7 these violations were willful, Bell and the Class  
8 members allege that the violations were negligent and  
9 seek issue certification of that issue and an  
10 appropriate remedy, if any, pursuant to 15 U.S.C.  
11 §1681o.  
12

13  
14  
15 **COUNT FOUR - CLASS CLAIM**  
16 **ADVERSE ACTION - CONTACT BY FACSIMILE, MAIL, COMPUTER**  
17 **AND SIMILAR MEANS**

18 61. Bell realleges and incorporates by reference  
19 all preceding allegations of law and fact.

20 62. Swift willfully violated 15 U.S.C.  
21 §1681b(b)(3)(B)(i) by taking adverse action based in  
22 whole or in part upon the consumer report without  
23 providing verbal, electronic or written notice within 3  
24 business days of taking the adverse action (i) that  
25 adverse has been taken based in whole or in part on the  
26 consumer report, (ii) the name, address and telephone  
27  
28

1 number of the consumer reporting agency, (iii) that the  
2 consumer reporting agency did not make the decision to  
3 take adverse action and is unable to provide the  
4 consumer with specific reasons why the adverse action  
5 was taken, (iv) that the consumer may request a free  
6 copy of the report and may dispute with the consumer  
7 reporting agency the accuracy or completeness of the  
8 report.  
9

10  
11 63. Bell and the Class members seek statutory  
12 damages for these violations pursuant to 15 U.S.C.  
13 §1681n(a)(1)(A).  
14

15 64. Bell and the Class members also seek punitive  
16 damages for these violations pursuant to 15 U.S.C.  
17 §1681n(a)(2).  
18

19 65. In the alternative to the allegations that  
20 these violations were willful, Bell and the Class  
21 members allege that the violations were negligent and  
22 seek issue certification of that issue and an  
23 appropriate remedy, if any, pursuant to 15 U.S.C.  
24 §1681o.  
25

26  
27 **WHEREFORE**, Daniel, Hodges, Bell and the putative  
28 class respectfully pray for the following relief:

1           A. An order certifying the proposed class  
2           herein pursuant to Fed. R. Civ. P. 23 and  
3           appointing the undersigned counsel to  
4           represent same;

5  
6           B. The creation of a common fund available  
7           to provide notice of and remedy Swift's  
8           unlawful conduct;

9  
10          C. Statutory and punitive damages for all  
11          class claims;

12  
13          D. Attorneys' fees, expenses and costs;

14  
15          E. Pre-judgment and post-judgment interest  
16          as provided by law; and

17  
18          F. Such other relief as the Court deems just  
19          and proper.

20                               Respectfully Submitted,

21  
22                               STUMPHAUZER O'TOOLE MCLAUGHLIN  
23                               McGLAMERY & LOUGHMAN CO LPA

24                               /s/ Dennis M. O'Toole  
25                               /s/ Matthew A. Dooley  
26                               /s/ Anthony R. Pecora

27                               LUBIN AND ENOCH, P.C.

28                               /s/ Stanley Lubin

LITIGATION ASSOCIATES, P.C.

/s/ Leonard A. Bennett

*Counsel for Plaintiffs*

**JURY DEMAND**

Plaintiffs demand a trial by a jury as to all  
issues presented herein.

STUMPHAUZER O'TOOLE MCLAUGHLIN  
McGLAMERY & LOUGHMAN CO LPA

/s/ Matthew A. Dooley

**CERTIFICATE OF SERVICE**

This will certify that a copy of the foregoing  
First Amended Class Action Complaint was filed  
electronically this 24<sup>th</sup> day of October, 2011. Notice of  
this filing will be sent to all counsel of record by  
operation of the Court's electronic filing system.

/s/ Matthew A. Dooley  
*Counsel for Plaintiffs*